

107TH CONGRESS
1ST SESSION

H. R. 1698

To ensure the application of the antitrust laws to local telephone monopolies;
and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 3, 2001

Mr. CANNON (for himself, Mr. CONYERS, Mr. ISSA, and Mr. NADLER) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To ensure the application of the antitrust laws to local
telephone monopolies; and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “American Broadband
5 Competition Act of 2001”.

1 **SEC. 2. AMENDMENT TO THE CLAYTON ACT ON THE APPLI-**
2 **CABILITY OF THE ANTITRUST LAWS TO CER-**
3 **TAIN VIOLATIONS IN THE TELECOMMUNI-**
4 **CATIONS INDUSTRY.**

5 The Clayton Act (15 U.S.C. 12 et seq.) is amended
6 by adding at the end the following:

7 “SEC. 28. (a) In any action based on a claim arising
8 under the antitrust laws—

9 “(1) the court shall not dismiss such claim on
10 the ground that the defendant’s conduct was or is
11 subject to the Communications Act of 1934 (47
12 U.S.C. 101 et seq.), or that such Act takes prece-
13 dence over, because of its specificity or recency of
14 enactment, the antitrust laws; and

15 “(2) the trier of fact may consider any conduct
16 that violates any obligations or requirements im-
17 posed by the Communications Act of 1934 (47
18 U.S.C. 101 et seq.), or rules adopted pursuant
19 thereto, in determining whether the defendant has
20 engaged in anticompetitive or exclusionary conduct.

21 “SEC. 29. (a) If an adjudicatory body determines that
22 an incumbent local exchange carrier in any particular
23 State has violated section 251, 252, 271, or 272 of the
24 Communications Act of 1934, or any rules promulgated
25 pursuant to such sections, such carrier shall be deemed
26 to have violated the antitrust laws.

1 “(b) In addition to any penalty that may be imposed
 2 under any other provision of law, such carrier and all af-
 3 filiates of such carrier may not jointly market in such
 4 State any advanced telecommunications service with any
 5 other telecommunications or information services offered
 6 by such carrier or by any of such affiliates.

7 “(c) Not later than 1 year after the enactment of the
 8 American Broadband Competition Act of 2001, the Attor-
 9 ney General shall submit a report to the Committee on
 10 the Judiciary of the House of Representatives and the
 11 Committee on the Judiciary of the Senate—

12 “(1) identifying suits brought under this sec-
 13 tion; and

14 “(2) describing the effect that the enforcement
 15 of this section has had on competitiveness in the
 16 telecommunication marketplace.”.

17 **SEC. 3. ESTABLISHMENT OF AN ALTERNATIVE PROCESS TO**
 18 **RESOLVE DISPUTES.**

19 (a) AMENDMENT.—Title 9 of the United States Code
 20 is amended by inserting after section 16 the following:

21 **“§17. Disputes arising under interconnection agree-**
 22 **ments**

23 **“(a) INTERCONNECTION AGREEMENT CONTROVER-**
 24 **SIES SUBJECT TO ARBITRATION.**—Any interconnection
 25 agreement entered into pursuant to section 252 of the

1 Communications Act of 1934 (47 U.S.C. 252) shall be
2 treated for purposes of this chapter as a contract con-
3 taining a written provision to settle by arbitration a con-
4 troversy thereafter arising out of such contract. Any such
5 controversy shall be subject to arbitration in accordance
6 with the alternate dispute resolution process established
7 pursuant to this section.

8 “(b) ESTABLISHMENT REQUIRED.—Within 90 days
9 after enactment of the American Broadband Competition
10 Act of 2001, the Attorney General shall prescribe a
11 multistate alternative dispute resolution process. The At-
12 torney General shall not include either the Federal Com-
13 munications Commission nor any State commission as a
14 party to such dispute resolution process.

15 “(c) CRITERIA FOR ESTABLISHMENT OF PROCESS.—
16 The multistate alternative dispute resolution process re-
17 quired by this section shall—

18 “(1) provide for a private, commercial arbitra-
19 tion process that will permit a requesting tele-
20 communications carrier to resolve a dispute related
21 to an interconnection agreement with an incumbent
22 local exchange carrier arising in 1 or several States
23 in an open, nondiscriminatory, and unbiased fashion
24 within 45 days after the filing of such dispute;

1 “(2) incorporate the Commercial Dispute Reso-
2 lution Procedures of the American Arbitration Asso-
3 ciation in effect at the date of enactment of the
4 American Broadband Competition Act of 2001 to
5 the extent consistent with the time limits imposed in
6 this section, except that all decisions of arbitration
7 panels constituted pursuant to this section shall be
8 in writing, publicly available, and posted on the
9 Internet;

10 “(3) permit all parties to have the right to dis-
11 covery; and

12 “(4) ensure requesting telecommunications car-
13 riers do not file frivolous disputes, and establish
14 penalties to deter such conduct.

15 “(d) AUTHORITY OF ARBITRATION PANELS.—Except
16 as otherwise provided in this section, awards and decisions
17 of such arbitration panels shall be enforceable in Federal
18 district courts pursuant to the procedures of this chapter.

19 “(e) NO COLLATERAL ESTOPPEL.—The parties to
20 the controversy shall be bound by the decision of the arbi-
21 tration panel as to the matter in controversy under the
22 interconnection agreement entered into pursuant to sec-
23 tion 252 of the Communications Act of 1934 (47 U.S.C.
24 252), but otherwise such decision shall not have the effect

1 of collateral estoppel in any other proceeding involving any
 2 of such parties.

3 “(f) OTHER REMEDIES NOT LIMITED.—Except as
 4 provided in subsection (e), the availability of alternative
 5 dispute resolution pursuant to this section shall not—

6 “(1) limit any other remedy a requesting tele-
 7 communications carrier might have for the same or
 8 similar facts, including relief before the Attorney
 9 General of the United States, the Federal Commu-
 10 nications Commission or State commissions (as de-
 11 fined by section 3 of the Communications Act of
 12 1934), courts of the United States, or any other ap-
 13 propriate forum; or

14 “(2) modify, affect, or supersede the authority
 15 and responsibility of the Federal Communications
 16 Commission to expeditiously administer and enforce
 17 the Communications Act of 1934.”.

18 (b) CONFORMING AMENDMENT.—The table of sec-
 19 tions of chapter 1 of title 9 is amended by inserting after
 20 the item relating to section 16 the following:

“17. Disputes arising under interconnection agreements.”.

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